



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2014

Ms. Teresa Brown
Senior Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-05241

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 518095 (Plano PD Tracking No. KITT010714).

The Plano Police Department (the "department") received a request for records pertaining to a named individual during a specified time period, including a specified report.¹ You state you have released some information to the requestor. You indicate the department does not maintain information responsive to a portion of the request.² You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See* *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it falls outside of the specified time period. This ruling does not address the public availability of non-responsive information, and the department need not release non-responsive information to the requestor.

Next, we note you have redacted information from the submitted documents. We understand the department has redacted motor vehicle information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and fingerprints pursuant to Open Records Decision No. 684 (2009).³ You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold the remaining redacted information without seeking a ruling from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. See Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); *id.* § 552.302. Thus, in the future, the department should refrain from redacting any information it submits to this office in seeking an open records ruling.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from the attorney general. See *id.* § 552.147(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including fingerprint information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks all reports pertaining to a named individual. This aspect of the request requires the department to compile the named individual's criminal history and implicates the privacy of the named individual. Therefore, to the extent the department maintains unspecified law enforcement records, other than information pertaining to the specified incident, listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information relating to the report specified by the requestor. Accordingly, we will address your arguments for this information.

Next, we note the submitted information contains a Magistrate's Warning and Order of Commitment that has been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court-filed document we have marked is subject to section 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that may be waived and does not make information confidential under the Act. *See id.* § 552.108; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the marked court-filed document under section 552.108. As you raise no further exceptions to disclosure of this information, the department must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how release of the information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us the remaining information relates to a pending criminal case. You further state the Collin County District Attorney's Office objects to release of the information at issue because its release would interfere with the prosecution of the case. Based on your representations and our review, we find you have demonstrated release of the information at issue would interfere with the detection, investigation, or prosecution of a

crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

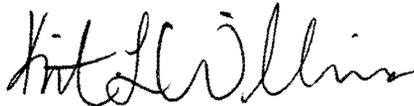
However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, to the extent the department maintains unspecified law enforcement records, other than information pertaining to the specified report, listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 518095

Enc. Submitted documents

c: Requestor
(w/o enclosures)